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**ISSUE**

Does a marriage between a court reporter and an assistant district attorney require disclosure of that relationship to all litigants in all matters when the assistant district attorney appears in the court to which the court reporter is assigned?

**ANSWER**

Not in every case. Instead, the judge must exercise discretion as to when the relationship must be disclosed.

**FACTS**

An assistant district attorney is married to a court reporter. The assistant district attorney regularly appears in the court to which the court reporter is assigned. Presently, every time the assistant district attorney appears in the court, even in routine matters, the court discloses the relationship.

**DISCUSSION**

The Committee concludes that the issue presented involves the provisions of SCR 60.03. SCR 60.03 states: "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities."

A judge is responsible for all of the activities that occur in the court room, including the environment that the judge creates or allows. A judge must at all times be vigilant about circumstances in the courtroom that are improper or give the appearance of impropriety.

The Committee concludes that disclosure of the relationship is not mandated in all cases. Instead, the Committee concludes that the judge must, after a careful review of the circumstances in each case, exercise his or her discretion as to whether the relationship between the court reporter and the assistant district attorney should be disclosed. That discretion should be guided by factors such as the nature and importance of the particular proceeding, the degree of publicity, the likelihood of appeal, and the degree of involvement of the court reporter and the assistant district attorney.

### **CONCLUSION**

A judge must exercise discretion on a case by case basis in determining whether to disclose a marriage between the court reporter and the assistant district attorney.

### **APPLICABILITY**

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60-Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purpose to address provisions of the code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 01-2 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin, this 20<sup>th</sup> day of March, 2002.

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Thomas H. Barland  
Chair